REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Rejection Under 35 USC §101

Applicants submit that 35 USC §112, paragraph 6 states, in sum, that claims may express a means or step for performing a specified function and the claim shall be construed to cover the corresponding structure, material or acts described in the specification, including any equivalents thereof.

The independent claims define an acoustic emission system with a means for generating an acoustic emission signal that picks up, for example, sound or vibrations generated by a substrate like biological tissue or skin. The means for generating the acoustic emissions signal, therefore, picks up and uses the information that results from skin on skin contact. Nowhere have Applicants included body parts as a claim limitation. An acoustic emission system is claimed.

In view of the above, Applicants submit that the rejection made under 35 USC §101 is improper and should be withdrawn.

II. Rejection Under 35 USC §102(a)

The Examiner continues to reject claims 1, 3-6, 8-11 and 17-20 under 35 USC §102(a) as being anticipated by non-patent literature submission: Abstract of a presentation at a skin conference in Hamburg, 2003, specifically Flament et al., and entitled, "Finger Perception Metrology Correlation Between Friction Force and Acoustic Emission", (hereinafter, abstract).

In the rejection, the Examiner maintains, in summary, that the abstract discloses a tactile acoustic emission measurement and analysis apparatus having a means for generating, collecting, storing and displaying an emission signal. The Examiner continues and mentions that the reference discloses a means for correlating the emission signal with an attribute of skin frictional forces to evaluate appearance of skin characteristics where the apparatus is a tool for clinical evaluations suitable for use by consumers and clinicians to study or evaluate the effect of the application of cosmetic compositions to assist with product selection and that the system is used in air. The Examiner finally notes the reference discloses that the system has a medium for indicia. Based on the above, the Examiner continues to believe that the novelty rejection under 35 USC §102(a) is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1, as presented, is directed to an acoustic emission measurement system comprising:

(A) means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces;

(B) means for collecting, storing and displaying said emission signal;

(C) means for correlating said emission signal with an attribute of said skin;

wherein said system is used as a clinical tool to evaluate efficacy of cosmetic skin care and/or cleansing products and further wherein the acoustic emission signal is emitted when skin on one area of the body slides or rubs on another area of the body without motorized support.

Again, the invention of claim 1 is further defined by dependent claims which claim, among other things, that the means for displaying the emission signal comprises a medium selected from the internet, a camera, palm pilot, mobile phone, mobile camera phone and advertising and promotional material that can include a television, magazines, brochures, posters, flyers and handouts. Additionally, claim 1 is further defined by dependent claims which claim, among other things that the system may be used by a consumer, beautician, or professional advisors and that the correlating represents attributes of pores, wrinkles, photo aging or skin texture. Claims 17-20 further define claim 1 such that the system is suitable for use in an acoustic medium which is air, water or an aqueous solution and the emission signal is generated from a hand or finger or a second body part. Applicants, <u>again</u>, wish to point out to the Examiner that the present system is superior in that an acoustic emission signal from

the body is generated by contacting skin-on-skin (please, again, see the limitations of the independent claims). Direct application of a probe or device onto the body is not required and this is what makes the present invention superior. Abrasive papers and motorized support are not required.

Independent claim 5 describes a cosmetic product selection and/or customization system comprising the acoustic emission system of claim 1. The same, again, is further defined by the dependent claims which claim, among other things, the type of medium which may be used.

In contrast, and as already made of record, the abstract relied on by the Examiner is merely directed to finger perception metrology whereby finger sliding tests are performed on various abrasive papers to show a good correlation of the co-efficient of friction and the variations of acoustic signals (please see Sec. 19, pages 168-169 of the abstract). The process set forth in the abstract works where the hand "..., remains united of a motorized support describing with a constant speed of 10 mm S-1 a journey of length 15 mm." Again, a prototype of perception metrology, therefore, is described to quantify the friction and acoustic signals during the sliding of the finger on a surface of materials. The teachings of the abstract clearly teach away from the presently claimed invention which creates emission signals from a body by contacting skin-on-skin (please see the limitations of the independent claims). Direct application of a device onto the body is not required in the current invention but is required in the technology described in the reference. Clearly, the abstract teaches the use of abrasive papers (Results section) and the need for motorized support. Applicants, again, would appreciate if the

Examiner could point out where skin-to-skin contact is mentioned in the abstract. Turning to claims 17-20, since the claims rely on independent claims requiring skin-on-skin frictional forces, they are not anticipated in view of the abstract of record. The presently claimed invention includes skin sliding or rubbing on skin and no motorized support. Applicants, again, respectfully direct the Examiner's attention to the "Results" section where the abstract teaches that finger sliding tests are performed on various abrasive papers, and the "Conclusion" section of the abstract where it has been reported that there is good correlation between the force of friction and the acoustic signal measured with the finger and an acoustic sensor on the skin.

In view of this, and again, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the abstract. It is also clear the abstract teaches away from the present invention. The teachings require a sensor to skin point of contact. Therefore, the Applicants, again, request that the novelty rejection be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

The Examiner, again, continues to reject claims 2 and 7 under 35 USC §103 as being unpatentable over the abstract of record in view of non-patent literature submission abstract of a presentation at a skin conference in Hamburg, 2003, Fleming "Mobile, multimedia computing for improved clinicopathalogic correlation in dermatopathology (hereinafter, "Fleming").

In the rejection, the Examiner maintains, in summary, that the abstract and Fleming teach all of the component parts of the claimed invention. In view of this, the Examiner continues to believe that claims 2 and 7 are appropriately rejected under 35 USC §103.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present inventions are directed to an acoustic emission measurement system and a cosmetic product selection and/or customization system that rely on the generation of acoustic emission signals from the body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces. As already made of record, the abstract requires sliding of the finger on various abrasive papers and does not rely on skin/skin frictional forces as set forth in the presently claimed inventions. In fact, the abstract teaches away from the presently claimed invention and describes a process utilizing motorized support. Applicants, again, would appreciate if the Examiner would show where skin-to-skin contact is taught in the abstract. While the Fleming abstract mentions the use of computers running software in dermatopathology laboratories, it does not cure the vast deficiencies of the abstract since the combination of references relied on by the Examiner, again, does not, even remotely, suggest ways to assess skin via skin/skin frictional forces.

In view of the above, it is clear, again, that all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, Applicants, again, request that the obviousness rejection be withdrawn and rendered moot.

Applicants respectfully submit the claimed invention is clearly in condition for allowance.

In view of the above, Applicants, again, request that all claims of record now be passed to issue. Reconsideration and favorable action are earnestly solicited.

Applicants, again, would appreciate recommendations from the Examiner so that the prosecution of this application may be expedited and the extreme expense of an appeal may be avoided.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned counsel at his earliest convenience.

Respectfully submitted,

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